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OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**

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March 14, 2003

William J. Rooney, Jr.
Vice President and General Counsel
Global NAPs, Inc.
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Bruce P. Beausejour
Keefe B. Clemons
Verizon New England, Inc. d/b/a Verizon Massachusetts
185 Franklin Street, Room 1403
Boston, MA 02107

RE: Petition of Global NAPs, Inc., pursuant to Section 252(b) of the
Telecommunications Act of 1996, for arbitration to establish an interconnection
agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts -
D.T.E. 02-45

Dear Attorneys Rooney, Beausejour and Clemons:

I. INTRODUCTION

On December 12, 2003, the Department of Telecommunications and Energy ("Department") issued its final arbitration order ("Arbitration Order") in the above-referenced docket, and directed Global NAPs, Inc. ("GNAPs") and Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") (collectively, "Parties") to incorporate the Department's findings into a final interconnection agreement. On January 16, 2003, GNAPs informed the Department that it intended to adopt the terms and conditions of the contract between Verizon and Sprint Communications Company, L.P. ("Sprint Agreement"). Verizon opposed GNAPs'

attempt to adopt the Sprint Agreement and filed a Motion for Approval of Final Arbitration Agreement on January 17, 2003 ("Motion"). In its Motion, Verizon provided, and sought approval of, contract language that it alleged conformed with the Arbitration Order. GNAPs filed its opposition to the Motion on January 23, 2003.

On February 19, 2003, the Department issued its Order ("February 2003 Order") granting Verizon's Motion. Specifically, the Department rejected GNAPs' attempt to adopt the Sprint Agreement in lieu of finalizing the arbitrated agreement, and approved the contract language submitted by Verizon as the final arbitrated agreement. February 2003 Order at 9-14. The Department held that its arbitration decisions were binding on parties to the arbitration, and may not simply be avoided, absent mutual consent of the parties. Id. Accordingly, the Department directed Verizon and GNAPs to sign the Department-approved final arbitrated agreement. Id. at 14, 15.

On February 26, 2003, Verizon filed a letter notifying the Department of GNAPs' failure to comply with the Department's orders ("Verizon February 26 Letter"). Specifically, Verizon informed the Department that GNAPs returned to Verizon a signed signature page that was materially altered to include provisions purporting to render "without effect" certain terms of the arbitrated agreement (Verizon February 26 Letter at 2). Verizon states that it informed GNAPs of its belief that the altered document failed to comply with the Department's February 2003 Order but that, according to Verizon, GNAPs stated that it would not sign the Department-approved arbitrated agreement without the additional provisions (id.). As a result, Verizon requests that the Department compel GNAPs' compliance with its orders and renews its request that the Department award Verizon its attorneys fees and costs incurred in connection with this arbitration proceeding (id.). Lastly, Verizon requests that the Department clarify that the Department-approved final arbitrated agreement signed by Verizon governs the parties' relationship in Massachusetts and that both parties to this arbitration proceeding must comply in all respects with this agreement (id.).

On February 27, 2003, GNAPs responded to Verizon's February 26 Letter ("GNAPs February 27 Letter"). According to GNAPs, the disagreements between the Parties, and possibly between GNAPs and the Department, about the law governing the situation at hand affect the steps GNAPs must take to protect its legal rights (GNAPs February 27 Letter at 1). GNAPs acknowledges that the normal Section 251/252 process contemplates that a party that loses on issues in arbitration will sign a contract embodying the terms with which it disagrees, and then seek relief in the courts; however, GNAPs argues that if that were all that was at issue between the Parties, then GNAPs would not have included the additional language (GNAPs February 27 Letter at 2). But, GNAPs contends, its actions are compelled by the position Verizon appears to take -- that the Department is somehow empowered under Sections 251/252 of the Act to authorize Verizon to violate binding FCC rules (id. at 3). Although the Department may disagree with GNAPs' interpretation of what the FCC rules require, GNAPs maintains that the issue at hand is how to indicate, in an amendment to the contract language in qualification of GNAPs' execution of the contract, the fundamental disagreement between the Parties, which is currently pending before the FCC, and the fact that GNAPs reserves its rights with respect to potential court challenges to the substance of the Department's orders

and with regard to its claim that aspects of the final arbitrated agreement are void because they contradict FCC rules (id.). Finally, GNAPs insists that its actions have not been intended to interfere with the implementation of the Department's responsibilities under Sections 251/252 but rather to reserve its rights and preserve its position with respect to the Parties' dispute (id.).

On March 3, 2003, Verizon responded to GNAPs February 26 Letter ("Verizon March 3 Letter"). Verizon argues that GNAPs' letter is premised on nothing more than its belief that the Department's ruling concerning the application of access charges on ISP-bound traffic delivered via virtual NXX traffic violates FCC rules (Verizon March 3 Letter at 1). But, Verizon states, the Department decided this very issue in the Arbitration Order and held that GNAPs was wrong (id.). Verizon contends that, although GNAPs disagrees with the Department, GNAPs' view of the merits of its position provides no excuse for its continued failure to comply with the Department's orders (id. at 2).

On March 6, 2003, GNAPs responded to Verizon's March 3 Letter ("GNAPs March 6 Letter") stating that it believes that it has complied with the Department's directive to sign the Department-approved final arbitrated agreement (GNAPs March 6 Letter at 1). The only dispute, GNAPs asserts, relates to GNAPs' reservation of rights with respect to aspects of the final arbitrated agreement that purport to authorize Verizon to take actions that violate federal law (id.). GNAPs maintains that Verizon is wrong on the merits as to its argument that it is entitled to receive intrastate access charges for ISP-bound traffic originating with a Verizon end user, handed off directly to GNAPs and delivered to an ISP and, thus, GNAPs needs and is entitled to a distinctive reservation of rights with respect to this issue because the only regulator empowered to authorize Verizon to receive such payments is the FCC (id. at 2). Finally, GNAPs notes that it is not asking Verizon to concede anything but that its language merely recognizes the disagreement regarding the scope of the FCC's preemption of the issue of intercarrier compensation for ISP-bound traffic (id.).

II. DISCUSSION

GNAPs has not complied with our directive in the February 2003 Order to sign the Department-approved final arbitrated agreement. In response to the Department's Order, GNAPs did not confine its actions merely to execute the Department-approved final arbitrated agreement, but instead unilaterally amended the agreement with words that could arguably be interpreted as an acceptance by Verizon upon its execution of the contract document as a change to the terms of the contract. Even if, as GNAPs insists, its amendment is merely a reservation of rights, the Department in the February 2003 Order contemplated no additional modifications or amendments to the final arbitrated agreement – and certainly no unilateral changes – when the Department approved the agreement. The Department finds no basis whatsoever to consider modifications or amendments to an agreement it has already approved. In fact, to consider modifications at this late stage would undermine the finality of the Department's approval of the arbitrated agreement and would only further delay finalization of the agreement.

To enforce our directives in the February 2003 Order, the Department hereby directs GNAPs to affix its signature to the Department-approved final arbitrated agreement without the nonconforming amendment at issue, and without any other modifications or amendments to the agreement, and to forward the same to Verizon by close of business on March 17, 2003. Should GNAPs fail to comply with our directives herein, the Department concludes that it shall deem the Department-approved arbitrated agreement fully executed and effective, as of February 26, 2003,¹ with Verizon's sole signature. The Department further directs Verizon to forward a copy of the signed agreement, with or without GNAPs' signature, to the Department by close of business on March 18, 2003. Under either result (that is, whether the unmodified agreement is signed by both GNAPs and Verizon or by Verizon alone), an agreement fully conformable to the February 2003 Order shall, upon execution and filing, replace the agreement between Verizon and GNAPs currently in place. The Department concludes that the Department-approved arbitrated agreement shall govern the Parties' relationship in Massachusetts.

By the Commission,

_____/s/_____
Paul B. Vasington, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

¹ The Department directed that the Parties sign and submit a copy of the executed final arbitrated agreement within seven (7) days of the issuance of the February 2003 Order, or by February 26, 2003. February 2003 Order at 15. Because the delay in finalizing the agreement was due to GNAPs' unilateral, and unauthorized, attempt to amend the agreement, the Department finds it appropriate to render the Department-approved arbitrated agreement effective as of February 26, 2003.